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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON
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10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 v.
13 SERGIO ZAVALA-CERVANTEZ,
14 Defendant.

NO. CR-06-0016-RHW

**ORDER DISMISSING
DEFENDANT'S MOTION FOR
DOWNWARD DEPARTURE**

15 Before the Court is Defendant's *pro se* Motion for Downward Departure
16 (ECF No. 104). Defendant was sentenced on January 25, 2008, to 143 months of
17 imprisonment and a four year term of supervised release. Defendant appealed his
18 sentence, which was affirmed by the Ninth Circuit Court of Appeals.

19 Defendant filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or
20 Correct Sentence, which was denied on May 28, 2010. This Court and the Ninth
21 Circuit Court of Appeals declined to issue a Certificate of Appealability.

22 In August, 2010, Defendant filed a Motion Under Rule 60(b). The Court
23 denied the motion. Defendant now moves for a Motion for Downward Departure,
24 asking that the Court reconsider the sentence imposed and resentence based on a
25 downward departure for voluntary deportation.

26 A court generally may not correct or modify a sentence of imprisonment
27 once it has been imposed. 18 U.S.C. § 3582(c); *United States v. Aguilar-Reyes*,
28 653 F.3d 1053, 1055 (9th Cir. 2011). In *Aguilar-Reyes*, the Circuit restated this rule

**ORDER DISMISSING DEFENDANT'S MOTION FOR DOWNWARD
DEPARTURE ~ 1**

1 and held that the fourteen day provision in Rule 35(a) is jurisdictional. *Id.* at 1056.
2 The Court does not have jurisdiction to hear Defendant's motion.

3 Accordingly, **IT IS HEREBY ORDERED:**

4 1. Defendant's Motion for Downward Departure (ECF No. 104) is

5 **DISMISSED.**

6 2. The Court declines to issue a Certificate of Appealability.

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
8 Order and forward a copy to Defendant.

9 **DATED** this 15th day of November, 2011.

10
11 s/Robert H. Whaley

12 ROBERT H. WHALEY
13 United States District Court
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**ORDER DISMISsing DEFENDANT'S MOTION FOR DOWNWARD
DEPARTURE ~ 2**